

**2023001355**

AVERY COUNTY NC FEE \$26.00

PRESENTED & RECORDED

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**ERIN G. ENGLISH**

REGISTER OF DEEDS

BY: CHERYL GARLAND

ASSISTANT

**BK: RE 587**

**PG: 1124 - 1132**

**Prepared By & Return to:** Elevate Land Partners II, LLC  
491 Williamson Road, Suite 207  
 Mooresville, NC 28117

**STATE OF NORTH CAROLINA  
AVERY COUNTY**

**DECLARATION OF COVENANTS, RESERVATIONS AND RESTRICTIONS  
Of**

**CLEAR CREEK**

This Declaration of Covenants, Reservations and Restrictions ("the Declaration") made this the 3rd day of April 2023, by Elevate Land Partners II, LLC, a North Carolina limited liability company, hereinafter called "Declarant";

WHEREAS, the Declarant is the owner of the real property described in Deed Book 586, Page 317; of the Avery County Registry, and has determined to establish a regime of Declarations intended to provide for a general plan for improvement thereof.

NOW THEREFORE, Elevate Land Partners II, LLC as Declarant, hereby provides on behalf of themselves and their successors and assigns, and for the benefit of the Declarant and each future owner of any lot within Clear Creek, that the real estate described in Article I hereof, from the date this Declaration is recorded in the office of the Register of Deeds of Avery County shall be held, conveyed, acquired and encumbered subject to the terms and provisions hereof, all of which shall run with the real estate and bind and inure to the benefit of all current owners and perspective purchasers and parties who have or may acquire any right, title, estate or interest in or to any of such real estate or who have or may acquire any right or occupancy of or interest upon any portion thereof, all subject to the right of the Association to amend this Declaration according to its terms. Every purchaser of any lot, as a condition of such purchase, agrees and covenants to abide by and conform to such restrictive and protective covenants and conditions and to be bound by the terms hereof.

## **ARTICLE I**

### **Clear Creek Subdivision**

The real property which is and shall be held, transferred, sold and conveyed subject to this Declaration is located in Avery County, North Carolina, and is all or a part of the property conveyed to Declarant herein by deed recorded in Deed Book 586, Page 317 of the Avery County Registry and being more particularly shown and described as on a Plat prepared by BPLS Ben Patton Land Surveying, PLLC entitled "Clear Creek Subdivision Final Plat for Elevate Land Group" recorded in Plat Book 46 at Page 221 of the Avery County Registry, and on any subsequent survey showing lots subdivided from the property described in Deed Book 586, Page 517.

Such property described above is sometimes referred to herein as the "Subdivision" or "Development." Each individual numbered lot as shown on the above described plat is referred to herein as a "Lot."

## **ARTICLE II**

### **Definitions**

1. "Association" or "Owners Association" means the Clear Creek Road Association, Inc. a North Carolina Non-Profit Corporation organized by declarant in accordance with the Act. The membership of the Association shall consist exclusively of all the lot owners and the Declarant.
2. "Declarant" is Elevate Land Partners II, LLC, a North Carolina Limited Liability Company, their successors and assigns. All special Declarant rights as herein defined and the obligations of Declarant as set out herein may be transferred only by written instrument recorded in Avery County, North Carolina, executed by both transferor and transferee.
3. "North Carolina Planned Community Act" or the "Act" is Chapter 47F of the North Carolina General Statutes. Declarant hereby incorporates the provisions of the North Carolina Planned Community Act, and declares the same to applicable to this subdivision in all respects except as specifically modified herein.
4. "Lot Owner" means the Declarant or other person who owns a lot, but does not include a person having an interest in a lot solely as security for an obligation.
5. "Improvements" means any fence, driveway, decking, shed, gazebo, outbuilding, garage, sign, or structure or construction of any kind, whether above or below the land surface, such as, but not limited to, buildings, outbuildings, water lines, sewers, electric and gas distribution facilities. Improvements specifically include any disturbance of the ground in preparation for or in the process of improving any lot.
6. "Special Declarant Rights" means rights reserved for the benefit of Declarant including, without limitation, the right (i) to complete improvements indicated on plats and plans filed with the declaration; (ii) to exercise any development right; (iii) to use easements through the common elements for the purpose of making improvements within the planned community or within real estate which may be added to the planned community; (iv) to re plat any lots owned by developer to make fewer or additional lots in the subdivision; (v) to amend the plat or these covenants during the period of Declarant control, including the right to grant easements for access to, over or across the common areas or roads for persons outside the subdivision; or vii) to appoint or remove any officer or executive board member of the Association during the period of Declarant control.

## **ARTICLE III**

### **\*\*\*Intentionally Omitted\*\*\***

#### **ARTICLE IV**

##### **Protective Covenants**

1. No Lot shall be used except for residential and recreational purposes. Each Lot owner shall maintain any improvements placed upon any Lot, and no unsightly or dilapidated buildings or other structures shall be permitted on any Lot. No parking or storing of any junked, inoperable or unlicensed automobiles, watercraft, trucks or heavy equipment is permitted on any Lot or road in the Development.
2. Lot 2 shall be exempt from the payment of association dues and the construction impact fee prior to the start of any construction, all other provision of these covenants and restrictions shall remain in effect.
3. No lots may be combined or subdivided without the permission of the Declarant. If permission is granted to subdivide, each newly created lot will be subject to pay property owners' dues for each new lot.
4. No residence shall be erected, constructed, maintained, used or permitted to remain on any Lot other than one single-family dwelling. Each residence to be constructed on a Lot shall have a minimum finished heated and cooled area of 1,200 square feet. Any residence must be approved by the Architectural Control Committee (hereinafter "ACC") and follow the guidelines set forth in this declaration. Once construction has begun on said dwelling, all exterior construction must be completed within 24 months of the commencement of construction.
5. No more than two outbuildings and one guest home may be constructed on any Lot.
6. Any grading or other land use which creates erosion runoff into streams or other Lots is prohibited. Any grading performed in violation of any county, state or federal ordinance, statute or regulation shall be deemed to be a noxious or offensive activity and may result in fines by the Association. or by the ACC, or in a civil action to enjoin such activity.
7. No commercial cutting of timber shall be permitted on any Lot. However, the clearing of home sites, or clearing to establish views from the home site is permitted. The removal of any dead or leaning trees is not prohibited in any circumstance. Cutting of smaller trees/bush hogging is permitted.
8. Disposal of trash and garbage will be the responsibility of each property owner.
9. Snow removal within the subdivision shall be a cost paid for by POA dues.
10. There shall be no single-wide mobile homes/manufactured homes, no double-wide mobile homes/manufactured homes, no previously constructed homes, buses or the like shall be installed on any lot or permitted to remain thereon as a residence, either temporarily or permanently.
11. Modular, or systems built homes may be permitted as approved by the ACC.
12. No structure may be built within fifteen (15') feet of any sideline, twenty-five (25') feet from the rear line and twenty-five (25') feet from the edge of the gravel of the newly constructed roadways. An easement for installation and maintenance of utilities, and for construction and maintenance of drainage facilities is hereby reserved in favor of the Association.
13. No surface or subsurface mining shall be conducted upon any Lot or within Clear Creek nor shall any machinery, appliance or structure ever be placed, operated or maintained thereon in connection therewith, nor shall there be any subsurface mining, drilling or blasting activity thereon.

14. All clotheslines, garbage cans, above-ground tanks, woodpiles, and other similar items shall be located or screened so as to be concealed from view of the other Lots, streets and areas in the Development outside the Lot on which such items are located.
15. After any improvements are made to any lot, the owner shall keep and maintain such lot in a neat and well-maintained condition, free of unsightly undergrowth, brush piles, felled trees and the like, and shall keep yards and other open areas of the lot neatly trimmed and either mowed or landscaped.
16. This development is not to be used as a campground. Camping is permitted, however, camping is not to be used as a permanent residence. Camping equipment must be removed if left unattended for more than three (3) days. Permanent residence in any type of camping equipment is strictly forbidden.
17. Hunting is not allowed at any time or on any part of the subdivision.
18. No trade, commerce or other activity which may be considered a nuisance to the neighborhood may be carried on upon any Lot. No advertisements or signage of any kind will be permitted on any Lot for home-based businesses.
19. The Declarant reserves the right to erect any signs in Clear Creek Subdivision. No other signs, including for sales signs, are permitted without the express written permission from the Declarant. Builder signs are permitted but must first be by the ACC.

#### **ARTICLE V**

##### **Architectural Control and Standards**

There is hereby established an Architectural Control Committee (hereinafter "ACC"), which shall be appointed by the Declarant, until the end of the control period.

1. No Improvements of any kind shall be erected, placed, altered, maintained or permitted to remain on any Lot, nor shall any construction be commenced thereon until plans for such Improvements have been approved by action of the ACC in accordance with the provisions herein; provided however, that improvements and alterations completely within the interior of a building may be completed without approval.
2. If damage and/or wear and tear attributed to construction of any Improvement is determined by the ACC to exist, then said property owner will be liable for any costs to repair such roadway damage.
3. Any Lot owner who commences an Improvement without written permission and stamped plan approval from the ACC is subject to a fine of \$100.00 per day for every calendar day from date of starting construction (i.e. digging footings, clearing Lot to build) until receipt of approval letter from the ACC. The ACC reserves the right to bring legal action against Lot owners who start building without approved plans.
4. Any land disturbance must be stabilized within twenty-four (24) hours, failure of Lot owner or owner's agent to stabilize disturbed area shall result in a fine of \$100.00 per day levied by the ACC or the Association.
5. The ACC may approve or disapprove any building plan based upon entirely subjective aesthetic standards relating to construction, placement, landscaping or other consideration as they relate to the actual or planned general community wide character of such buildings.
6. The actions of the ACC through its approval or disapproval of plans, and other information submitted pursuant hereto, or with respect to any other matter before it, shall be conclusive and binding on all interested parties.
7. All communications and submittals shall be addressed to Elevate Land Group, Attention Derek Buchanan, 86 Eagles Nest Maintenance Trail, Banner Elk, NC 28604 or to any such address as the ACC shall hereinafter designate in writing. The ACC shall reply in writing to all plan

submittals within thirty (30) days of receipt hereof. The ACC shall have 30 days to approve complete plans that have been submitted by Lot owner(s) or builder. Whenever possible the ACC will meet the owner and contractor on site to review submitted materials.

The following are "Building Standards" as created by the Declarant:

**Building Type:**

- Stick built construction only (no mobile) except as specifically modified herein.

**Exterior:**

- Block, brick, rock/stone foundation.
- Wood, log, rock/stone, stucco, brick, or fiber cement (i.e. Hardiplank), or any combination is permitted. Vinyl and aluminum siding is not permitted. Any siding made of materials other than wood or fiber cement must be approved by the ACC.
- Any new materials that are approved by the North Carolina Homebuilders Association may be considered and must be approved by the ACC.
- Exterior of homes must be of earth tone colors.
- Detached garages are permitted, but must be constructed of the same exterior material as the home.
- No chain-link, barbed wire or other similar wire fencing allowed.

**Contractor Responsibilities:**

- Contractor must have proof of insurance; to include but not limited to automobile, workman's compensation, and liability insurance of no less than one million dollars.
- Contractor may be required to provide references to ACC prior to plan approval.
- Contractor must provide one (1) portable toilet for each job site within the development. The contractor must present a maintenance agreement, which allows for weekly dumping/cleaning of portable toilet.
- Contractors must have a dumpster on site for each job site. Trash and excess/waste building materials shall be placed in dumpster at the end of each working day.
- The Association reserves the right to levy fines of \$100 per day against contractors who do not adequately clean building site or do not have a functioning portable toilet.
- Building materials cannot be placed within road rights of way or utility easements.
- Contractor must assume liability for all construction vehicles that enter Clear Creek Subdivision en route to their job site, specifically overweight vehicles that damage road surface and negligence of operators. Concrete truck weight limit is 5 yards per truck.
- Contractor is responsible for actions of any/all subcontractors.
- Contractors/subcontractors are responsible for any cut, break or damage to underground utility caused by their negligence.

The Owner or Contractor shall post a non-refundable construction impact fee in the amount of \$1,500 prior to the start of any construction. Such impact fee shall be for the purpose to assure the repair and damage caused by any construction undertaking including but not limited to damage to the roads, utilities, common area or damage from erosion and injuries or damages to any Lot.

**Lot Owner Responsibilities:**

- Present 2 copies of schematic drawings of home, preliminary site plan, Contractor proof of insurance and general list of exterior building materials, to ACC. Colors used on exterior of home must be included and color samples may be required.
- ACC shall inspect and approve staked driveway and house locations and verify contractor compliance before commencement of construction.
- Lot owner is responsible for the acts and omissions of all agents, employees, contractors, and subcontractors.
- If the lot has been improved (built upon), then the owners of the improved lot shall maintain their lot (s) to neatly kept and mowed condition. All stumps, brush piles and debris shall be removed from lot (s) or hidden from sight from the roadways.

Neither the ACC, the Developer, nor any member, employee or agent thereof, shall be liable to any owner of a Lot or to anyone submitting plans for approval or to any other interested party by reason of mistake in judgment, negligence, or nonfeasance in connection with the approval, disapproval or failure to approve any such plans or for any other action in connection with its or their duties hereunder. Likewise, anyone who submits plans to the ACC for approval agrees not to bring any action or suit to recover any damages against the Declarant, the ACC, or any partner, member, employee or agent of the Declarant or the ACC.

The ACC may in its sole discretion make exceptions to the provisions herein when the general character of the requested exceptions, as fully developed and occupied in accordance with the owner's plans would not be in conflict with the intended character of the property subject to this Declaration, or when changes are reasonably necessary to conform to the topography of a particular lot.

## **ARTICLE VI**

### **Powers and Duties of the Owners Association**

Clear Creek Road Association, Inc. a North Carolina non-profit corporation, (the "Association"), shall have and exercise all of the rights, powers and authority, as set forth in the NC Planned Community Act.

Clear Creek Road Association shall have the following duties and obligations;

1. The Association shall cause the limited common elements, including the subdivision roadways and the rights of ways appurtenant thereto, the entrance landscaping and gate and any other common areas to be maintained, repaired and replaced when necessary, to assess the lot owners equally as necessary, and to recover the costs of such maintenance, repair or replacement as herein provided.
2. The Association shall keep financial records sufficiently detailed to enable the association to comply with the Planned Community Act and the North Carolina Non-Profit Corporation Act, and shall make such records reasonably available for examination by any lot owner and the authorized agents of such lot owner.
3. The Association shall maintain casualty and liability insurance in such amounts and on such common elements as are insurable, in accordance with N.C.G.S. 47F-3-113.

## **ARTICLE VII**

### **Executive Board Powers and Duties**

There shall be an Executive Board of Clear Creek Road Association, which shall consist of members and officers, and shall have the following duties and obligations;

1. The executive board may act unilaterally in all instances on behalf of the Association. In the performance of their duties, officers and members of the executive board shall discharge their duties in good faith. Officers shall act according to the standards for officers of a non-profit corporation set forth in N.C.G.S. 55A-8-42, and members of the board shall act according to the standards for directors of a non-profit corporation set forth in N.C.G.S. 55A-8-30.
2. The lot owners, by a majority vote of all persons present and entitled to vote at any meeting of the lot owners at which a quorum is present may remove any member of the executive board with or without cause, other than a member appointed by the Declarant.
3. Within 30 days after adoption of any proposed budget for the Association the executive board shall provide to all the lot owners a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The executive board shall set a date for a meeting of the lot owners to consider ratification of the budget, such meeting to be held not less than 10 nor more than 60 days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting. The budget is ratified unless at that meeting a majority of all the lot owners in the association rejects the

budget. In the event the proposed budget is rejected, the periodic budget last ratified by the lot owners shall be continued until such time as the lot owners ratify a subsequent budget proposed by the executive board in the same manner.

4. Notwithstanding any provision to the contrary, no action of the association or the executive board, including the proposal or approval of any budget, shall be effective to raise annual assessments by more than five percent (5%) unless such budget or assessment increase shall be ratified by the affirmative vote of a majority of the lot owners present in person or by proxy at an annual or special meeting called for the purpose of considering such increase, and at which a quorum is present.

## **ARTICLE VIII**

### **Association Meetings, Membership and Voting Rights**

1. In addition to the annual meeting, a meeting of the Association may be called by the president, a majority of the executive board, or by lot owners having ten percent (10%) of the votes in the association. Not less than 10 nor more than 60 days in advance of any meeting the secretary shall cause notice to be hand delivered or sent prepaid by U.S. mail to the mailing address of each lot or to any other mailing address designated in writing by the lot owner, or sent by electronic means, including by electronic mail over the Internet to an electronic mailing address designated in writing by the lot owner. The notice of any meeting shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove a director or officer.
2. A quorum is present throughout any meeting of the association if persons entitled to cast ten percent (10%) of all the authorized votes are present in person or by proxy at the beginning of the meeting.
3. In the event business cannot be conducted at any meeting of the association or the executive board because a quorum is not present, that meeting may be adjourned to a later date by the affirmative vote of a majority of those present in person or by proxy. The quorum requirement at the next meeting shall be one-half of the quorum requirement applicable to the meeting adjourned for lack of a quorum. This provision shall continue to reduce the quorum by fifty percent (50%) from that required at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted.
4. Meetings of the association and the executive board shall be conducted in accordance with the most recent edition of Robert's Rules of Order.
5. Except for lots owned by Declarant during the period of Declarant control, each lot in Clear Creek Subdivision is entitled to one vote in the Association. If only one of the multiple owners of a lot is present at a meeting of the association, the owner who is present is entitled to cast such vote. If more than one of the multiple owners is present, the vote may be cast only in accordance with the agreement of a majority in interest of the multiple owners. Such majority interest is conclusively presumed if any one of the multiple owners casts the vote without protest being made promptly to the person presiding over the meeting by any of the other owners of the lot.
6. Notwithstanding the provisions of the previous paragraph, for any issue coming before the Association or the Board having to do only with the use, maintenance or control of either roadway that is a limited common area or the amount of assessments that should or may be levied by the Association against the lot owners using or capable of using such roadway, only lot owners of lots using such roadway or capable of using such roadway are entitled to vote, and a majority of such owners is required to act.
7. Votes may be cast by written proxy executed by any lot owner. If a lot is owned by more than one person, each owner may vote, or may register protest to the casting of votes by other owners, by proxy. A lot owner may not revoke a proxy except by actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated. Every proxy expires 11 months after its date, unless a shorter term is specified in the proxy.
8. No votes may be cast on behalf of lots owned by the Association.
9. The Association or the Executive Board may by affirmative action, delegate to one or more committees the responsibility for any authorized actions, so as to facilitate efficient and effective management of the Association.

**ARTICLE IX**  
**Assessments for Common Expenses**

1. Until the Association shall make a different expense assessment, assessments for each lot shall be \$500.00 per year.
2. Declarant shall be exempt from paying any and all property owner association dues.
3. Payments of annual or special assessments shall be due 30 days after the beginning of the fiscal year, or otherwise as determined by the Association. Any assessment levied against a lot which remains unpaid for a period of 30 days or longer shall bear interest at the rate of eighteen per cent (18%) per year from the due date thereof, and shall constitute a lien on that lot when a claim of lien is filed in the office of the Clerk of Superior Court of Avery County, North Carolina.
4. Service charges, late charges and other all other charges posed on a lot or lot owner by the association as fines, fees, special assessments, penalties or the like under the provisions of Article constitute a similar lien, bear the same interest, and are enforceable under this Article as annual assessments, except as limited by the provisions of N.C.G.S. 47F-3-116.
5. Under the provisions of N.C.G.S. 47F-3-116, the Association may collect and enforce any and all such assessments by civil action, by foreclosure under Article 2A of Chapter 45 of the General Statutes, by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes, or otherwise as provided by law. In any such action the Association may include and shall recover costs or expenses of collection or foreclosure, including reasonable attorney's fees. The collection of attorney's fees in any such action is limited by the requirement in such General Statute that notice of intent to seek attorney's fees must be provided to the lot owner, and that attorney's fees may not be charged unless the debt is contested.
6. The lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing of the claim of lien in the Office of the Clerk of Superior Court of Avery County.
7. The lien created by this Article is prior to all liens and encumbrances on a lot except (i) liens and encumbrances (specifically including but not limited to a deed of trust on the lot) recorded before the docketing of the claim of lien in the Office of the Clerk of Superior Court, and (ii) liens for real estate taxes and other governmental assessments and charges against the lot.

**ARTICLE X**  
**Declarant Control**

1. The Declarant Control Period shall extend for five (5) years from the date of recording of these Covenants and Restrictions or until Declarant relinquishes said rights in writing, recorded with the Avery County North Carolina Register of Deeds. Declarant shall have the power and authority to levy and collect annual assessments and special assessments from existing property owners as provided in the Declaration and any amendments thereto.
2. During the Declarant Control Period, Declarant shall have the authority to unilaterally amend or change these Declarations in its sole discretion. During the Declarant Control Period, the POA shall not adopt any bylaws, rules, regulations, or the like which change the rights and obligations set forth by these Declarations or which are in contradiction to these Declarations. In the event of any conflict between any bylaws, rules, regulations or the like and these Declarations, these Declarations shall control.
3. So long as the Declarant Control Period is in effect, Declarant shall not have to pay any assessments on lots owned by Declarant, though the Declarant may still vote those lots.

**ARTICLE XI**  
**Amendment**

## ARTICLE XI Amendment

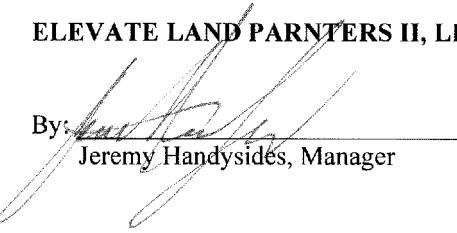
1. Except in case of amendment executed by Declarant under the terms of this declaration or by special Declarant right, this declaration may be amended only by affirmative vote of or written agreement signed by at least sixty-seven percent (67%) of the Members of the Property Owners Association, who appear in person or by proxy at a meeting called wherein the notice of such meeting fairly states the proposal to amend the covenants and the substance of such proposed amendment.
2. Every amendment to this declaration shall be prepared, executed, recorded and certified in accordance with N.C.G.S. 47-41, shall be recorded in the Office of the Register of Deeds of Avery County, North Carolina, and shall be effective only upon such recordation.
3. No action to challenge the validity of an amendment adopted pursuant to this article may be brought more than one year after the amendment is recorded.

## ARTICLE XII Miscellaneous Provisions

1. This Declaration, as may be amended from time to time, shall run with the land and shall be binding on all parties, their successors and assigns, and upon all persons claiming by or under them until January 1, 2048, at which time said covenants shall be automatically extended for successive periods of ten (10) years unless, by majority vote of the current owners of the Lots described herein, it is agreed to terminate said covenants in whole or in part.
2. Invalidation of any of these covenants or any part thereof by judgments or Court order shall in no way affect any of the other provisions which shall remain in full force and effect. The failure of any person or persons to take action to restrain the violation of any of these covenants and restrictions shall not be construed as waiver of any enforcement rights and shall not prevent the enforcement of such covenant or covenants in the future.

IN WITNESS WHEREOF, ELEVATE LAND PARTNERS II, LLC has caused this instrument to be executed in its name by its Manager, this the day and year first above written.

**ELEVATE LAND PARTNERS II, LLC**

By:   
Jeremy Handysides, Manager

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

I, Ann Marie Wilson, a Notary Public of the State and County aforesaid, certify that **Jeremy J. Handysides** personally appeared before me this day and acknowledged that he is a Manager of ELEVATE LAND PARTNERS II, LLC, a North Carolina limited liability company and by authority duly given and as the act of the LLC, he executed the foregoing instrument.

WITNESS my hand and official seal, this the 3rd day of April 2023.

My commission Expires: 7/28/2027

  
Notary Public

